
Introduced by Senator Roth

February 18, 2015

An act to amend Sections 52 and 55.52 of the Civil Code, relating to disability access.

LEGISLATIVE COUNSEL'S DIGEST

SB 251, as introduced, Roth. Civil rights: disability access.

Existing law establishes remedies for discrimination on the basis of various specified personal characteristics, including disability. The Construction-Related Accessibility Standards Compliance Act establishes standards for making new construction and existing facilities accessible to persons with disabilities and provides for construction-related accessibility claims for violations of those standards.

This bill would make technical, nonsubstantive changes to these provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 52 of the Civil Code is amended to read:
2 52. (a) Whoever denies, aids or incites a denial, or makes any
3 discrimination or distinction contrary to Section 51, 51.5, or 51.6,
4 is liable for each-and-every offense for the actual-damages, and
5 any amount that may be determined by a jury, or a court sitting
6 without a jury, up to a maximum of three times the amount of
7 actual damage but in no case less than four thousand dollars
8 (\$4,000), and any attorney's fees that may be determined by the
9 court in addition thereto, damages suffered by any person denied

1 ~~the those rights provided in Section 51, 51.5, or 51.6. and both of~~
2 ~~the following:~~

3 (1) *An amount to be determined by a jury, or a court sitting*
4 *without a jury, not more than three times the amount of actual*
5 *damages but not less than four thousand dollars (\$4,000).*

6 (2) *Attorney's fees as may be determined by the court.*

7 (b) Whoever denies the right provided by Section 51.7 or 51.9,
8 or aids, incites, or conspires in that denial, is liable for each ~~and~~
9 every offense for the actual damages suffered by any person denied
10 that right and, in addition, the following:

11 (1) An amount to be determined by a jury, or a court sitting
12 without a jury, for exemplary damages.

13 (2) A civil penalty of twenty-five thousand dollars (\$25,000)
14 to be awarded to the person denied the right provided by Section
15 51.7 in ~~any~~ an action brought by the person denied the right, or
16 by the Attorney General, a district attorney, or a city attorney. An
17 action for that penalty brought pursuant to Section 51.7 shall be
18 commenced within three years of the alleged practice.

19 (3) Attorney's fees as may be determined by the court.

20 (c) Whenever there is reasonable cause to believe that ~~any a~~
21 person or group of persons is engaged in conduct of resistance to
22 the full enjoyment of any of the rights described in this section,
23 and that conduct is of that nature and is intended to deny the full
24 exercise of those rights, the Attorney General, ~~any a~~ district
25 attorney ~~or attorney~~, a city attorney, or any person aggrieved by
26 the conduct may bring a civil action in the appropriate court by
27 filing with it a complaint. The complaint shall contain the
28 following:

29 (1) The signature of the officer, or, in his or her absence, the
30 individual acting on behalf of the officer, or the signature of the
31 person aggrieved.

32 (2) The facts pertaining to the conduct.

33 (3) A request for preventive relief, including an application for
34 a permanent or temporary injunction, restraining order, or other
35 order against the person or persons responsible for the conduct, as
36 the complainant deems necessary to ensure the full enjoyment of
37 the rights described in this section.

38 (d) Whenever an action has been commenced in ~~any a~~ court
39 seeking relief from the denial of equal protection of the laws under
40 the Fourteenth Amendment to the Constitution of the United States

on account of race, color, religion, sex, national origin, or disability, the Attorney-General or any *General*, district-attorney *attorney*, or city attorney for or in the name of the people of the State of California may intervene in the action upon timely application if the Attorney-General or any *General*, district-attorney *attorney*, or city attorney certifies that the case is of general public importance. In that action, the people of the State of California shall be entitled to the same relief as if it had instituted the action.

(e) Actions brought pursuant to this section are independent of any other actions, remedies, or procedures that may be available to an aggrieved party pursuant to any other law.

(f) Any person claiming to be aggrieved by an alleged unlawful practice in violation of Section 51 or 51.7 may also file a verified complaint with the Department of Fair Employment and Housing pursuant to Section 12948 of the Government Code.

(g) This section does not require any construction, alteration, repair, structural or otherwise, or ~~modification of any sort whatsoever~~, *modification* beyond that construction, alteration, repair, or modification that is otherwise required by other provisions of law, to any new or existing establishment, facility, building, improvement, or any other structure, nor does this section augment, restrict, or alter in any way the authority of the State Architect to require construction, alteration, repair, or modifications that the State Architect otherwise possesses pursuant to other laws.

(h) For the purposes of this section, “actual damages” means special and general damages. This subdivision is declaratory of existing law.

(i) Subdivisions (b) to (f), inclusive, shall not be waived by contract except as provided in Section 51.7.

SEC. 2. Section 55.52 of the Civil Code is amended to read:

55.52. (a) For purposes of this part, the following definitions apply:

(1) “Construction-related accessibility claim” means ~~any~~ a civil claim in a civil action with respect to a place of public accommodation, including, but not limited to, a claim brought under Section 51, 54, 54.1, or 55, based wholly or in part on an alleged violation of any construction-related accessibility standard, as defined in paragraph (6).

(2) “Application for stay and early evaluation conference” means an application to be filed with the court that meets the requirements of subdivision (c) of Section 55.54.

(3) “Certified access specialist” or “CASp” means any person who has been certified pursuant to Section 4459.5 of the Government Code.

(4) “Meets applicable standards” means the site was inspected by a CASp and determined to meet all applicable construction-related accessibility standards pursuant to paragraph (1) of subdivision (a) of Section 55.53. A site that is “CASp inspected” on or before the effective date of the amendments made to this section by ~~Senate Bill 1186 of the 2011–12 Regular Session of the Legislature~~ *Chapter 383 of the Statutes of 2012* means that the site “meets applicable standards.”

(5) “Inspected by a CASp” means the site was inspected by a CASp and is pending a determination by the CASp that the site meets applicable construction-related accessibility standards pursuant to paragraph (2) of subdivision (a) of Section 55.53. A site that is “CASp determination pending” on or before the effective date of the amendments made to this section by ~~Senate Bill 1186 of the 2011–12 Regular Session of the Legislature~~ *Chapter 383 of the Statutes of 2012* means that the site was “inspected by a CASp.”

(6) “Construction-related accessibility standard” means a provision, standard, or regulation under state or federal law requiring compliance with standards for making new construction and existing facilities accessible to persons with disabilities, including, but not limited to, any provision, standard, or regulation set forth in Section 51, 54, 54.1, or 55 of this code, Section 19955.5 of the Health and Safety Code, the California Building Standards Code (Title 24 of the California Code of Regulations), the federal Americans with Disabilities Act of 1990 (Public Law 101-336; 42 U.S.C. Sec. 12101 et seq.), and the federal Americans with Disabilities Act Accessibility Guidelines (Appendix A to Part 36 of Title 28 of the Code of Federal Regulations).

(7) “Place of public accommodation” has the same meaning as “public accommodation,” as set forth in Section 12181(7) of Title 42 of the United States Code and the federal regulations adopted pursuant to that section.

(8) “Qualified defendant” means a defendant in an action that includes a construction-related accessibility claim that is asserted

1 against a place of public accommodation that met the requirements
2 of “meets applicable standards” or “inspected by a CASp” prior
3 to the date the defendant was served with the summons and
4 complaint in that action. To be a qualified defendant, the defendant
5 is not required to have been the party who hired any CASp, so
6 long as the basis of the alleged liability of the defendant is a
7 construction-related accessibility claim. To determine whether a
8 defendant is a qualified defendant, the court need not make a
9 finding that the place of public accommodation complies with all
10 applicable construction-related accessibility standards as a matter
11 of law. The court need only determine that the place of public
12 accommodation has a status of “meets applicable standards” or
13 “inspected by a CASp.”

14 (9) “Site” means a place of public accommodation.

15 (b) Unless otherwise indicated, terms used in this part relating
16 to civil procedure have the same meanings that those terms have
17 in the Code of Civil Procedure.